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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,307	12/16/2003	Jody Lynn Hoying	9455	5961

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EXAMINER	
PIERCE, JEREMY R	

ART UNIT	PAPER NUMBER
1771	

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/737,307	HOYING ET AL.	
	Examiner	Art Unit	
	Jeremy R. Pierce	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-30 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-30 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 8/30/04.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 26 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Takai et al. (U.S. Patent No. 6,479,130).

With regard to claim 26, Takai et al. disclose a flexible sheet to be used in a disposable garment that comprises a topsheet, backsheet, and an absorbent core (Figure 8). The topsheet is in fluid communication with the absorbent core (column 6, lines 9-15). The topsheet comprises a nonwoven fabric having zones where the fibers are oriented parallel to the plane of the topsheet and zones where the fibers are oriented perpendicular to the plane of the topsheet (Figure 3 and column 5, lines 63-67).

With regard to claim 27, the topsheet has two sides. The upper side is a film and the lower side is a nonwoven fabric whose fibers extend through the film layer to the other side (column 5, lines 1-6).

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 2, 4-6, 10-13, and 15 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Takai et al.

With regard to claim 1, Takai et al. disclose that the film layer may be hydrophobic while the fibers of the fabric which extend through the film layer may be hydrophilic to enable improved capillary action to the absorbent core (column 6, lines 44-54). Takai et al. do not teach a rewet value or a fluid acquisition rate. Although Takai et al. do not explicitly teach the limitations of rewet value or fluid acquisition rate, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. topsheet comprising an upper hydrophobic layer and a lower hydrophilic layer) and in the similar production steps (i.e. having portions of the hydrophilic layer protrude through the hydrophobic layer) used to produce the topsheet. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed properties would obviously have been provided by the process disclosed by Takai et al. because Takai et al. teach it is desirable to promote capillary action downward into the absorbent core. Similar reasoning applies with regard to claims 10 and 11. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. With regard to claims 5

and 6, the fibers extending through the film may be done in a uniform, discrete manner (Figure 8).

With regard to claim 12, the hydrophilic layer may be formed from a spunbonded fabric (column 4, line 55). With regard to the rewet value and fluid acquisition rate property recitations, similar inherency/obviousness analysis made above applies.

Claim Rejections - 35 USC § 103

5. Claims 3, 7, 8, 14, 16, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takai et al. in view of Richards et al. (U.S. Patent No. 5,607,414).

With regard to claims 3 and 14, Takai et al. teach the skin-contacting layer of the topsheet is made of a plastic film, but do not teach the layer may be a nonwoven web. Richards et al. also teach topsheet materials useful in absorbent products (Abstract). Richards et al. teach that the uppermost layer of the topsheet may be either apertured film or nonwoven (column 3, lines 61-64). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use a nonwoven fabric as the top layer in Takai et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. With regard to claims 7 and 16, Takai et al. teach using synthetic thermoplastic fibers (column 4, line 41), but fail to teach any particular polymer. Richards et al. teach that suitable thermoplastic fibers for topsheets include polyethylene, polypropylene, and polyester (column 8, lines 65-66 and column 10, lines 23-43)). Due to the silence in Takai et al. as to the polymer used, it would have been

necessary, and therefore obvious to a person of ordinary skill in the art to use polyethylene, polypropylene, or polyester in order to utilize known thermoplastic materials for the purpose of creating an absorbent article, as taught by Richards et al. With regard to claims 8 and 17, Richards et al. also teach using bicomponent fibers (column 9, lines 31-63).

6. Claims 9 and 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takai et al. in view of Richards et al. as applied to claims 3 and 14 above, and further in view of Thompson et al. (U.S. Patent No. 5,382,245).

With regard to claims 9 and 18, Takai et al. do not teach the fibers to be non-round. Thompson et al. disclose an absorbent article comprising capillary channel fibers (Abstract). Thompson et al. teaches the capillary channel fibers increase fluid transportation into the absorbent core (column 9, lines 44-60). Thompson et al. also teach that such fibers should reside in the fibrous layer between the topsheet and the core and some fibers should protrude into the topsheet (column 10, lines 11-35). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use non-round fibers in the hydrophilic layer of Takai et al. in order to improve liquid transportation into the core, as taught by Thompson et al.

With regard to claim 19, Takai et al. teach the layer between the topsheet and absorbent core may be carded (column 10, line 35). It would have been obvious to a person having ordinary skill in the art at the time of the invention to card the fibrous topsheet layer of Takai et al. in order to enable better use of the capillary fibers, as taught by Thompson et al. Although Takai et al. do not explicitly teach the limitations of

rewet value or fluid acquisition rate, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. topsheet comprising an upper hydrophobic layer and a lower hydrophilic layer) and in the similar production steps (i.e. having portions of the hydrophilic layer protrude through the hydrophobic layer) used to produce the topsheet. The burden is upon the Applicant to prove otherwise. In the alternative, the claimed properties would obviously have been provided by the process disclosed by the references because both Takai et al. and Thompson et al. teach it is desirable to promote capillary action downward into the absorbent core.

7. Claims 19, 20, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takai et al. in view of Melius et al. (U.S. Patent No. 6,323,388).

With regard to claim 19, Takai et al. do not teach the hydrophilic layer comprises a carded nonwoven web. Melius et al. teach an absorbent article (Abstract). Melius et al. teach that the layer lying between the film topsheet and the absorbent core may be a bonded carded web (column 33,line 63 – column 34, line 3). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use a carded web between the film topsheet and the absorbent core of Takai et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. Although Takai et al. do not explicitly teach the limitations of rewet value or fluid acquisition rate, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. topsheet comprising an upper

hydrophobic layer and a lower hydrophilic layer) and in the similar production steps (i.e. having portions of the hydrophilic layer protrude through the hydrophobic layer) used to produce the topsheet. The burden is upon the Applicant to prove otherwise. In the alternative, the claimed properties would obviously have been provided by the process disclosed by the references because both Takai et al. and Melius et al. teach it is desirable to promote capillary action downward into the absorbent core. With regard to claims 23 and 24, Melius et al. teach the bonded carded layer comprises polyester fiber (column 34, line 5) and bicomponent fiber (column 34, line 7).

8. Claim 21 rejected under 35 U.S.C. 103(a) as being unpatentable over Takai et al. in view of Melius et al. as applied to claim 19 above, and further in view of Richards et al. as applied to claim 3 above.

9. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Takai et al. in view of Melius et al. as applied to claim 19 above, and further in view of Richards et al. as applied to claim 3 above, and further in view of Thompson et al. as applied to claim 9 above.

10. Claims 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takai et al. in view of Everhart et al. (U.S. Patent No. 6,626,961).

Takai et al. do not disclose using petrolatum lotion on the body-facing portion of the absorbent material. Everhart et al. disclose that petrolatum-based lotion applied to a nonwoven fabric provides fluid handling and skin health benefits during product use (Abstract). It would have been obvious to a person having ordinary skill in the art at the time of the invention to apply petrolatum lotion to the fabric surface of Takai et al. in

order to improve fluid handling and skin health benefits, as taught by Everhart et al. With regard to claim 28, Everhart et al. teach the HLB to be as low as 7 (column 5, line 17).

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 1-30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of copending Application No. 10/737,235. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to a fibrous article comprising similar longitudinal orientations of fibers in discrete areas in one layer with similar dependent claims. Although the '235 Application does not recite the presence of an absorbent core and a backsheet, implementation of these layers is obvious in order to use the material as a disposable personal care article.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

13. Claims 1-30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of copending Application No. 10/737,306. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '306 Application is directed to a similar two layer fibrous article with areas of discrete tufts and differing properties between the layers. Although the '306 Application does not recite the presence of an absorbent core and a backsheet, implementation of these layers is obvious in order to use the material as a disposable personal care article.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

14. Claims 1-30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/737,430. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to a fibrous article comprising similar longitudinal orientations of fibers in discrete areas in one layer with similar dependent claims. Although the '430 Application does not recite the presence of an absorbent core and a backsheet, implementation of these layers is obvious in order to use the material as a disposable personal care article.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

15. Claims 1-30 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-44 of copending Application No. 10/737,640. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '640 Application also claims a fibrous web with discrete areas of fibers having linear orientation in the direction of tufts formed. Although the '640 Application does not recite the presence of an absorbent core and a backsheet, implementation of these layers is obvious in order to use the material as a disposable personal care article.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on normal business hours, but works flextime hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JRP

Jeremy R. Pierce
October 3, 2005

ELIZABETH M. COLE
PRIMARY EXAMINER